



Susana Martinez
GOVERNOR

State of New Mexico
Department of Finance & Administration
180 Bataan Memorial Building
Santa Fe, New Mexico 87501
Phone: (505) 827-4985
Fax: (505) 827-4984
www.nmdfa.state.nm.us

Duffy E. Rodriguez
Cabinet Secretary

November 15, 2018

Secretary Ned Fuller
General Services Department
Joseph Montoya Building
1100 St. Francis Drive
Santa Fe, New Mexico 87505

Dear Sec. Fuller:

It has recently come to my attention that the Risk Management Division ("RMD") of the General Services Department ("GSD") is assigning new cases to firms using Section 15-7-10 NMSA 1978. As you may know, this section contains the following language:

"Any valid contract between the risk management division and any law firm, to defend claims against the state or any of its public employees pursuant to Subsection B of Section 41-4-4 NMSA 1978, shall be automatically extended for the purpose of and as long as necessary for *completing and concluding any matter in litigation*, including appeals, referred to the firm for defense prior to the termination date stated in the contract or any applicable amendment thereto. *Automatic renewal pursuant to this section* applies only to matters which were in litigation and were referred to the law firm *prior to the contract termination date* and *does not apply to regular contract renewals.*" [emphases added]

The language of the statute clearly empowers the RMD Director to allow firms to *complete ongoing cases begun under a pre-existing contract*. This statutory permission *does not extend*, however, to "regular contract renewals," which are required for the assignment of any new case. To interpret this unambiguous language otherwise is to pervert its clear purpose.

We further understand that your assignment of new cases is an attempted exercise of contract amendments put in place earlier this year. To allow assignment of new cases under an amendment extending the termination date would be to allow the procurement exception to swallow the entire Procurement Code. No procurement would ever be needed again under such a reading of the language – the result is absurd.

To the Department of Finance and Administration's ("DFA") knowledge, no RMD Director has ever interpreted the above statute in such an egregious manner.

To be clear, DFA will not take part in this mismanagement of RMD contracts. Please consider this letter DFA's formal notice that it views RMD's misguided application of statute, rule, and the Model Accounting Practices ("MAPs") to be clear violations of law.

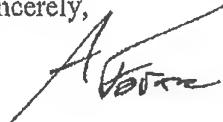
It also creates a serious problem if RMD uses, or has been using, the claims upload file to pay

attorneys for these improperly-assigned cases, which would circumvent proper payment procedure. DFA insists that such practice is not used, as such use of the upload file would not only lack the required transparency for proper payment of legal fees but it also, by its surreptitious nature, potentially indicates further violations of statute, rule, and MAPs.

It is my hope that GSD's misappropriation of new cases ends here. Otherwise, I have no choice but to consider RMD's practices, in addition to their clear illegality, willful.

Thank you for your attention to this matter.

Sincerely,



A.J. Forte
Deputy Secretary/State Budget Director
Department of Finance and Administration